IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Criminal Misc. No. M-28263 of 2015
Date of Decision: 10.02.2016

Raj Kumar Sharma

...Petitioner(s)

Versus

State of Haryana & others

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not?
3. Whether the judgment should be reported in the Digest?

Present:- Mr. S.S. Narula, Advocate
for the petitioner.

Ms. Shaveta Sanghi, AAG, Haryana.

Ms. Sonal Datta, Advocate
for respondent no.2.
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HARI PAL VERMA, J.

Petitioner - Raj Kumar Sharma son of Late Shri Satpal Sharma, resident of Trishul Villa, Near Kundan Lal Hospital, Ahmadgarh, District Sangrur has filed the present petition under Section 482 CrPC for issuance of directions to respondents no.1 and 2 to hand over the investigation of case FIR No.267 dated 10.4.2015 under Sections 406, 420, 506 IPC, Police Station Model Town, Panipat to some high ranked police official of a specialized agency, who is not amenable to undue influence wielded by respondents no.5 and through his real brother, respondent no.7, who is stated to be posted as Inspector General of Police with Punjab Police.

Briefly stated, FIR No.267 dated 10.4.2015 under Sections 406, 420, 506 IPC, Police Station Model Town, Panipat was registered against respondents no.5 and 6 at the instance of the petitioner. The petitioner, who is a resident of Ahmadgarh, District Sangrur owned a firm namely Sun Canada Exim Inc. situated at 1210-18, Knightbridge Road, Brampton L6T 3X5 CA, Canada. The said firm deals in supply of waste garbage containers. Firm supplies old rags after purchasing it from Canada. Petitioner had family relations with respondents no.5 and 6 and they do visit each other's house very often. The respondents-accused asked the petitioner to send old garbage from Canada to India and they will do business in partnership. Respondent no.5 told the petitioner that he will induct the petitioner in his firm namely M/s Soniya International, 45, Friends Colony, Panipat and the profit earned by them shall be distributed in the proportion of 50:50. Accordingly, the petitioner made an investment of 50,000 USD in the partnership. The respondents-accused also invested some money in this business and all the accounts were maintained in Soniya International at Panipat. The petitioner used to send old rags from Canada to Panipat, whereas the respondents-accused after filtering the same, used to sell it in the market. This business kept on running smoothly for some time. The petitioner had sent material worth 7,98,295.03 USD in several containers to the respondents-accused from 8.10.2011 to April, 2014. However, the respondents-accused accounted for material worth 7,41,492.57 USD only. Regarding this, the petitioner made telephonic conversations with respondent no.5 several times and sent numerous e-mails asking for the accounts. Some e-mails were replied and the petitioner was also given assurances that the entire accounts would be provided and the balance money shall be given. Though the respondents-accused told about the profit earned, but did not give any account of the same. They rather purchased material from the money invested in the partnership, but showed losses incurred thereon. They supplied vague accounts. It was never decided that the respondents-accused can purchase material from outside. It has been averred that the accounts supplied by the respondents-accused were totally wrong and therefore, they have played fraud upon the petitioner and usurped his 56,802.66 USD. The petitioner was informed by e-mail that two container shipments have not been received, as the same have been stopped by the Customs Department and are lying with them, for which, Rs.11 lacs would be required for clearance. In this manner, the respondents-accused have concocted false story and usurped his money. The accounts furnished by the respondents-accused were shown as losses in business and therefore, the documents are false. The petitioner ended the partnership and rather, asked the respondents-accused to furnish accounts, but no accounts were supplied to him. In this manner, the respondents-accused have usurped an amount of Rs.35 lacs of the petitioner by committing fraud and cheating and when the petitioner asked for return of money, they have threatened to kill him.

Reply by way of affidavit of Atma Ram, D.S.P., Traffic, Panipat has been filed on behalf of respondents no.1 to 4, wherein it has been stated that the petitioner is doing the business of rags (wastage garbage) at Canada under the name and style of Sun Canada Exim Inc. and he had entered into an oral agreement with respondents no.5 and 6 to the effect that the petitioner shall supply rags from Canada to the respondents-accused in their firm M/s Soniya International, Panipat. The petitioner was partner of 50 paise in the said firm and therefore, profit was to be divided in the proportion of 50:50 between both the partners. Initially, both the partners did some business of rags, however, after some time, differences arose between them on the issue of distribution of profit and loss. Neither there was any written agreement nor the terms and conditions of the business were reduced into writing and everything was oral. The police has conducted the investigation very thoroughly, but during investigation, it was not proved that the petitioner was partner of the firm M/s Soniya International, Panipat and at the most, it was a case of distribution of profit and loss between the parties. Thus, the issue was absolutely civil in nature and no criminal liability is established. In this manner, the police after conducting thorough investigation has submitted cancellation report which is pending consideration before the trial Court. It has been further submitted that the investigation was conducted by the local police honestly, fairly and without any influence of higher police officials. The plea of the petitioner that the matter be handed over to some high ranked police official of some specialized agency is totally misconceived and rather, imaginary.

Learned counsel for petitioner contended that the matter needs to be handed over for investigation to some high ranked police official of a specialized agency, as brother of respondent no.5 namely Bhushan Garg, IPS is posted as Inspector General of Police with Punjab Police, whereas his another brother is practicing as a doctor at Panipat. After registration of the FIR, respondent no.5 started building influence upon the police of Police Station, Panipat, which is apparent from the conduct of the police that though the FIR was registered on 10.4.2015, but no effective steps have been taken thereon to interrogate respondents no.5 and 6 or to collect relevant material from them. The accused are roaming freely and openly and rather, claiming that no harm can be done to them. Under the influence of the police, the police is trying to hush up the matter in order to save respondents no.5 and 6. He further submitted that the allegations in the FIR are serious and the respondents no.5 and 6 had an oblique intention from the very inception to usurp the money of the petitioner.

Learned counsel for the petitioner has referred to a judgment of Hon'ble the Apex Court in the case of ***Rubabbuddin Sheikh v. State of Gujarat & others 2010(1) RCR (Criminal) 738*** and a judgment of Kerala High Court in the case of ***J. Prabhavathiamma v. State of Kerala 2008(1) RCR (Criminal) 778*** to contend that in appropriate case when the Court feels that the investigation by the police is not in proper direction and higher police officials are involved in the crime, it is always open to the Court to hand over the investigation to an independent agency like C.B.I. While referring to the judgment in the case of ***J. Prabhavathiamma** (supra),* learned counsel submits that in order to secure the ends of justice, the High Court has inherent powers under Section 482 CrPC and 226 of the Constitution of India, enabling the Court to order further investigation by special investigating agency in the circumstances of the case to avoid failure of justice.

Learned State counsel has also submitted that purposeful investigation has been carried out by the investigating agency. Entire relevant record was taken into consideration during the course of investigation. Since the very dispute between the parties was on the issue of distribution of profit and loss, it can be rightly concluded that the mater in dispute is purely of civil in nature. As a matter of fact, the investigating agency has delved deep into the matter and the relevant record was taken into consideration while preparing the cancellation report. Moreover, there is no written agreement between the parties and even if there is written or oral agreement, the remedy lies somewhere else.

I have heard learned counsel for the parties.

There is no dispute regarding the proposition of law that the High Court while exercising its inherent powers under Sections 482 CrPC and Article 226 of the Constitution of India, is competent enough to order further investigation by special investigating agency or by ordering transfer of the investigation, as observed in the judgments in the cases of ***Rubabbuddin Sheikh*** *(supra)* and ***J. Prabhavathiamma*** *(supra)*, but I am afraid to state that none of the judgments cited by learned counsel for the petitioner are attracted in the facts and circumstances of the present case. Therefore, the same are of no help to the petitioner being distinguishable on facts. The complete gist of the FIR, so lodged against the respondents-accused suggests that the whole case revolves around distribution of profit and loss between the petitioner on the one hand and respondents no.5 and 6 on the other side. It is admitted case of the parties that there is no written agreement between them with regard to their business transactions and sharing profits. Therefore, the parties are required to prove their case by leading their respective evidence. However, nothing has come on record that the petitioner was entitled for any particular amount of profit. On the basis of the FIR so lodged at the behest of the petitioner, the police has investigated the matter and while submitting its report has come to a categorical finding of fact that the dispute between the parties is purely civil in nature and no criminal act was found to have been committed. Admittedly, the petitioner has also not availed the remedy of rendition of accounts.

Respondent no.7 is stated to be a higher ranked official of Punjab Police, however, he is nowhere in the picture, so far as functioning of the police of the State of Haryana is concerned. Except that respondent no.7 is brother of respondent no.5, no material has been placed on record, which can substantiate the allegation of the petitioner that respondent no.7 is instrumental in hampering the investigation or influencing the investigation in any manner. Merely because respondent no.7 happens to be brother of respondent no.5, is *ipso facto* no ground to hand over the investigation to some higher police official, more particularly, when respondent no.7 is not working in the State of Haryana i.e. the place where the FIR in question was registered. The police has conducted a detailed investigation and accordingly, submitted the cancellation report. In case the petitioner is not happy with the cancellation report, he has remedies under the law.

Reference may be made to judgment of Hon'ble Apex Court in the case of ***State of West Bengal & ors. v. The***

Committee for Protection of Democratic Rights West Bengals & ors. 2010(2) RCR (Criminal) 141, wherein it was held that the order directing a specialized agency to investigate, is not to be passed as a matter of routine, rather, such like extraordinary judicial power must be used sparingly and in exceptional circumstances where it becomes necessary to instill confidence in the investigation or where the incident is of national of international ramifications. The relevant observations made in the said case read as under:-

> *"46. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. In so far as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the*

fundamental rights. Otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations."

Accordingly, the present petition is dismissed, being devoid of any merit.

February 10, 2016 **(HARI PAL VERMA)**
AK **JUDGE**